

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

Claudia Albers, <i>et al.</i>,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 04-cv-0271-MJR
)	
ExxonMobil Coal USA, Inc.,)	
)	
Defendant.)	

**REPLY TO DEFENDANT'S RESPONSE TO PLAINTIFFS'
MOTION FOR VOLUNTARY DISMISSAL UNDER RULE 41(a)(2)**

COMES NOW, Plaintiffs Claudia Albers, *et al.*, by and through their undersigned Counsel, and for their reply to Defendant's Response to Plaintiffs' Motion for Voluntary Dismissal under Federal Rule of Civil Procedure 41(a)(2) state as follows:

1. On October 22, 2004, Plaintiffs filed their Motion for Voluntary Dismissal under Rule 41(a)(2).
2. On October 28, 2004, Defendant filed its Reply to Plaintiffs' Motion for Voluntary Dismissal requesting the Court allow Plaintiffs to voluntarily dismiss, but limiting any possible refiling of the case to the Southern District of Illinois.
3. Plaintiffs are undergoing research with regards to existing clients and prospective clients who have approached Plaintiffs about joining the cause of action.
4. If Plaintiffs' Counsel determines after further investigation that different or additional Plaintiffs are appropriate for this lawsuit and/or that different facts are determined to be applicable

to the cause of action, Plaintiffs should be free to file in whatever court is appropriate based upon the facts determined at that time.

5. Plaintiffs argue they should be free to file in whatever court is appropriate based upon the facts determined at the time; if the new facts or new clients do not meet jurisdictional requirements for the Federal Court, Plaintiffs should not be forced to file in the wrong court.

WHEREFORE, Plaintiffs request this Court Grant their Motion for Voluntary Dismissal without prejudice and without any stipulation as to where the cause should be refiled should the Plaintiffs choose to refile.

Respectfully submitted,

Claudia Albers, *et al.*,

By: LIVINGSTON LAW FIRM

/s/ Penni S. Livingston

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CERTIFICATE OF SERVICE

I hereby certify that on the 1st of November, 2004, the foregoing Plaintiffs' Reply to Defendant's Response to Plaintiffs' Motion for Voluntary Dismissal Under Rule 41(a)(2) was filed electronically with the Clerk of the Court and counsel of record registered in the Court's system as reflected by email addresses shown or by first class mail, postage prepaid, to those counsel of record not registered in the Court's system.

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